S Bel 2/45

1945 K Examined

# File No. S. Bel

Legal DEPARTMENT

A BRANCH

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**Subject:—** Suits Belgaum

C.S.No. 477 of 1944

(1) Padmannappa Shivappa Shidnale
Plaintiff

Vs.

(1) The Provincial Govt. of Bombay.

(2) Sinnappa Bharmanna Shidnale

(3) Vasu Bharmanna.

(4) Bhima Bharma Kothale
—Defendants

Claim Rs 6-12-0 For Court fee
& Rs 5-0-0 For Jurisdiction

Civil Appeal No. 249 of 1947

R 27
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File No. S. Bel 2/45

Std Sects. Slip 24-B

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| | | 3) V. Bharmann | |
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Suit No. 477 of 1944.

Translation of the registered rent note dated 31.8.1926 in respect of two portions of S.No.22 of Kothali, taluka Chikodi executed by Bharma Shivappa Shidnale and Padmanna Shivappa Shidnale in favour of Sattu Narsinga Koli.

To

Mr.Sattu Narsinga Koli Japti sanadi, age 57 years, caste Koli, occupation agriculture, of Kothali, taluka Chikodi.

We 1. Bharma and 2 Padmanna Shivappa Shidnale, age 60/50 respectively caste Jain, occupation agriculture, of Kothali taluka Chikodi, do hereby execute Kabulayat as under :-

Two parcels of the Japti sanadi Inam Jirayat land - situated in the Inam village Kothali in the Chikodi Sub-Registrary in Chikodi taluka - of Belgaum District - known as Pandu's field - the pot -bissa measurement has not been done - described below :-

1. First parcel of S.Nos.22 Area 4 acres Assk 4-2-4 having the following boundaries : -

East - portion of the same S.No.belonging to Dada Balu Koli etc.
West and South - S.No.19.
North. - S.No.21.

2. Second parcel of S.No.22 Area 5 acres Assk.5-3-0., having the following boundaries :-

West & East - Portion of the same S.No.belonging to Dada Balu etc.
South - S.No. 19 & 23.
North - S.No. 21 & 32.

These lands we have taken from you for 25 years from Shake 1848 to Shake 1872 (inclusive) - i.e.25 crops - on condition of paying annual rent of Rs.50/- to you. We will pay you the amount of rent annually and take your receipt. If the rent is not paid annually as agreed, we will pay the sum with interest at the rate of Re.one per hundred per month whehever demanded by you. We will pay the assessment on the land viz.Rs.10-8-0. We will not allow this liability to be shifted on you. We will maintain the field in a fit state for agriculture and shall maintain the Govt. boundary marks. After enjoying theland in this way for 25 years we will restore it to your possession in Chaitra Shake 1873 without claiming adverse possession. This agreement is binding on us and our heirs. The land has been taken over and cultivated in proper season. ONly the Kabulayat had remained to be executed and we haveexecuted it today.

dated the 31st Aug.1926.

Belgaum Civil Suit No. 477 of 1944.

This suit is against the order of resumption passed by the revenue officers directing resumption of the suit land which was a sanadi service land held by one Sattu Narsinga. In 1926 Sattu who was a discharged sanadi, gave a lease of S. Nos. 22/1 and 22/3 to the plaintiff for a term of 25 years at an annual rent of Rs. 50. After the death of his widow his collaterals applied to the Prant Officer for restoration to them of the suit lands alleging that the lease in favour of the plaintiff was an alienation of watan land and therefore void. The application was granted by the Prant Officer. In appeal the Collector confirmed the order of resumption but further directed that as the lands were not likely to be required for providing remuneration in future they should be resumed and treated as Government waste. After a further unsuccessful appeal to the Bombay Revenue Tribunal the plaintiff has filed this suit. He contends that his lease is valid and he is not entitled to be evicted for the duration of the lease.

The suit is defensible. The assignment of the service land by a lease is contrary to section 7 of the Watan Act and the Collector has therefore the power to deal with it under section 11 of the Act as also under Rule 4 of the Rules of Resumption framed by Government (see Phadnis Watan Act, 1936 edition, p.244 and 248-249). The suit also appears to be barred under section 4 of the Revenue Jurisdiction Act and Article 14 of the Limitation Act. The defence may be sanctioned on the lines of the accompanying brief.

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No 5118
d. 12-7-45

A.A.L.R. 3/7/45
R.L.A.
Secy R.D. 10/7/45
12.7.45

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Reg. Suit No.477 of 1944.

In the Court of the Civil Judge, Senior Division, Belgaum.

1. Padmanna Shivappa Shidnale of Kothali.....Plaintiff;

vs

1. Province of Bombay & 3 others.....Defendants.

Claim Rs.6-12-0 for Court-fee and
Rs.5- 0-0 for jurisdiction.

Herein the written statement of the Defendant No.1 is as under:-

1. This defendant denies the plaintiff's claim in toto.

2. The plaintiff's suit is barred under section 4(a) clauses 1,3 and 4 of the Bombay Revenue Jurisdiction Act.

3. The suit as framed is virtually to have the order of the Revenue Officers set aside and not having been brought within one year from the first order passed against the plaintiff, viz. by the Prant, N.D., on the 15th March 1942, is barred under Article 14 of the Indian Limitation Act.

4. The cause of action stated by the plaintiff in para.3 of the plaint is not correct.

5. The order of resumption of the suit lands is valid.

6. The suit lands are sanadi lands and the Collector has power to deal with these holdings under the proviso to rule 4 of the Rules of Resumption and resume them under certain conditions. The order of resumption is therefore valid and intra vires under the Rules of Resumption and plaintiff's contentions to the contrary are untenable.

7. The contention of the plaintiff that he is a 'Small holder' and tenant is not admitted. It is further submitted that even if he be held to be a small holder, the provisions of the Small Holders' Relief Act and of the Tenancy Act relied on by the plaintiff are not at all applicable to the present case and are irrelevant.

8. Assuming without admitting that the provisions of the Small Holders' Relief Act and the Tenancy Act are relevant, these Acts do not apply to Government, the Crown not being

expressly named in the Acts.

8. The plaintiff is not entitled to any of the reliefs claimed by him.

9. For the reasons stated above, the plaintiff's suit should be dismissed with costs.

District Government Pleader, Belgaum.

I, District Government Pleader, Belgaum, do hereby declare that what is stated in paragraphs 1 to 9 above is true according to the information received and believed to be true. This verification is made at on the day of August 1945.

District Government Pleader, Belgaum.

*Suits :*

Belgaum.

For a declaration that Government is not entitled to recover possession of the suit land from the Plaintiff for the duration of the lease executed by him and his brother in favour of the deceased Sattu Narsinga.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 5311.

Bombay Castle, 18th July 1945.

Letter from the Collector of Belgaum, No. L.A.W. 661, dated the 10th April 1945—Forwarding papers in the suit noted in the margin; and requesting sanction to its defence.

IN THE COURT OF THE FIRST CLASS SUBORDINATE JUDGE, BELGAUM.

Civil Suit No. 477 of 1945.

Padmannappa Shivappa Shidnale .. .. Plaintiff;

*versus*

(1) The Provincial Government of Bombay; (2) Jinnappa Bharmanna Shidnale; (3) Vasu Bharmanna; (4) Bhima Bharma Kothale .. Defendants.

Claim—(*i*) Rs. 6-12-0 for Court-fee.
(*ii*) Rs. 5-0-0 for Jurisdiction.

Endorsement by the Commissioner, Southern Division, No. L.S.T. 338, dated the 27th April 1945—Forwarding the above with his concurence.

Memorandum to the District Government Pleader, Belgaum, No. 5310, dated the 18th July 1945—Forwarding a copy of the brief with its accompaniments in advance.

RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order of the Governor of Bombay,

P. N. MOOS,
Secretary to Government.

G. R., No. 5311, L. D. dated the 18th July 1945.

To

*The Revenue Department,
The Commissioner, Southern Division
The Collector of Belgaum,
The District Government Pleader, Belgaum (with two copies of the brief

* With a copy of the brief.

No. of 1945.

Copy forwarded for information and guidance to.

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BELGAUM CIVIL SUIT NO. 477 OF 1944.

*Chronological Statement of Facts.*

1. The suit is for a declaration that Government is not entitled to recover possession of the suit land from the plaintiff for the duration of the lease executed by him and his brother in favour of the deceased Sattu Narsinga.

2. Survey No. 22 of the village of Kothali (taluka Chikodi) was a sanadi service land held by Sattu Narsinga. It was kept under attachment during the sanadi reorganisation of 1911.

3. On 31st August 1926, Sattu Narsinga gave a lease of two portions of the suit land viz. Survey Nos. 22/1 and 22/3 to the plaintiff and his brother Bharma Shivappa Shidnale at an annual rent of Rs. 50 for a period of 25 years.

4. Sattu died in 1936, leaving him surviving his widow Krishnabai who died on 3rd December 1939.

p. 1 of file I. 5. On 27th May 1940, Shankar Dadu Koli and three others applied to the Prant Officer, Northern Division, for restoration to them of the suit lands, alleging that the lease in favour of plaintiff was an alienation of watan lands and therefore void.

p. 75 do. 6. After an inquiry, the Prant Officer held on 15th March 1942 that the lease to plaintiff was an alienation and ordered that the lands should be resumed from the possession of the plaintiffs and restored to the applicants.

p. 1 of file 2. 7. On 30th March 1942, the plaintiff appealed to the Collector of Belgaum. The Collector upheld the Prant Officer's order of resumption, but holding that the lands were not likely to be required for providing remuneration in the future ordered that instead of being restored to the applicants they should be entered as Government waste for eventual disposal. (No. W.T.P. 2353, dated 26th April 1943.)

p. 43 do. 8. Both the parties appealed to the Bombay Revenue Tribunal. The tribunal dismissed the appeals on 11th February 1944.

p. 59 do. 9. On 19th October 1944, the plaintiff gave notice of suit under section 80 of the Civil Procedure Code and on 21st December 1944 he filed the present suit in the Court of the Civil Judge (Senior Division), Belgaum.

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*Grounds of Defence.*

1. *Jurisdiction.*—The order of resumption of the suit lands was passed by the Prant Officer and the Collector under rule 4 of the Rules of Resumption framed by Government (by Notification No. 10336, dated 12th October 1908) in exercise of the powers conferred on Government by Act XI of 1852 and Bombay Acts II and VII of 1863. By virtue of these powers which are reserved to Government under section 1, clause (*3*), of the Bombay Hereditary Offices Act, 1874, Government can deal with these holdings under the Resumption Rules referred to above. The order of the Prant Officer was therefore perfectly valid and *intra vires* and the plaintiff virtually seeks to set aside that order since he cannot get any of the reliefs so long as that order remains in force. The suit is therefore barred under the first, third and fourth paragraphs of section 4 (*a*) of the Bombay Revenue Jurisdiction Act [~~which enacts that a Civil Court has no jurisdiction to entertain suits to set aside or avoid any order under the Watan Act or any other law relating to the same subject for the time being in force passed by the Provincial Government or any other officer duly authorized in that behalf.~~]

2. *Notice.*—The notice of the suit is not included in the file submitted with the Collector's report. The District Government Pleader should obtain it from the

Collector and examine it to see whether it is in accordance with the provisions of section 80. It is settled law that the section is express, explicit and mandatory and admits of no exceptions or implications. An omission to comply strictly with the provisions of that section is fatal to the suit and must result in a rejection of the plaint under Order VII, rule 11, of the Civil Procedure Code. (Bhagchand *v.* Secretary of State, I. L. R. 51 Bom. 725.)

3. *Limitation.*—The cause of action arose on 30th March 1942 on which date the Prant Officer ordered the resumption of the suit lands from the plaintiff. The suit is therefore timebarred under Article 14 of the Limitation Act. Under the said Article time begins to run from the date of the order and in computing the period of limitation under that Article the time spent in prosecuting appeals before the revenue authorities cannot be excluded. The reason is that section 11 of the Bombay Revenue Jurisdiction Act only requires that before filing the suit the plaintiff must have *presented* all such appeals allowed by law as within the period of limitation allowed for bringing such suit, it was possible to present. The plaintiff need not have waited until all the appeals were decided. (Ganesh *v.* Secretary of State, I. L. R. 44 Bom. 451.)

4. *Merits.*—The High Court has held in Limbaji *v.* Rama, 1898 P. J. 127, followed in Vishnu *v.* Shankar, 35 Bom. L. R. 114, that *sanadi* lands are watan property governed by the provision of the Watan Act. The position of Government with regard to such land is that they are not watan lands falling under the provisions of the said Act (See Phadnis pp. 240-241). When such property has passed without the sanction of Government into the ownership or beneficial possession of any person other than the officiator for the time being, the Collector has the power to deal with these holdings under the Rules of Resumption made under the powers conferred on Government by Act XI of 1852 and Bombay Acts II and VII of 1863 and reserved under section 1, clause (*3*), of the Watan Act. The proviso to rule 4 gives power to the Collector to resume sanadi lands if at any time he is satisfied that the service in respect of which any such lands are held is no longer performed or that its performance is no longer necessary or that such lands or any part thereof or any of the profits thereof have or has by succession or otherwise come into the possession of any person other than the person who for the time being is duly authorized to perform and does actually perform the service in respect of which such lands are held. In this case, the suit lands which are admittedly sanadi lands have passed into the beneficial possession of the plaintiff who holds them under a lease from Sattu Narsingha the discharged sanadi. The plaintiff is neither authorized nor actually performs the service in respect of which the lands were held by Sattu Narsingha. The order of resumption is therefore valid under the Rules of Resumption and plaintiff's contentions to the contrary are untenable.

5. The plaintiff further contends that he is a small holder in continuous possession of the suit property since 1925-26 and he cannot therefore be evicted according to the provisions of the Bombay Small Holders' Relief Act, 1938, and the Bombay Tenancy Act, 1939. In reply, it should in the first instance be pointed out that both these enactments are irrelevant and cannot be applied to the facts of this case. The Small Holders' Relief Act makes provision for the temporary relief of small holders. The relevant provisions are found in sections 3, 6 and 9 of the Act. Section 3 provides for the stay in certain circumstances of all proceedings for the sale of land belonging to a small holder for the recovery of any money under a decree, the execution of which has been transferred to the Collector under section 68 of the Civil Procedure Code. Section 6 provides for the stay of proceedings in execution of decrees in so far as they relate to the attachment or sale of milch cattle, dwelling house, standing crop and other household goods of a small

holder. Section 9 protects a tenant in certain circumstance against eviction by the landlord in pursuance of any decree or order of any Court. The Tenancy Act of 1939 is designed to give protection to tenants of agricultural land against eviction and termination of tenancy. Section 5 (2) of the Act provides that notwithstanding any agreement, usage, decree or order of a Court of law the tenancy of land held by a protected tenant shall not be terminated unless such tenant makes a default by the payment of rent in the manner provided in clauses (*a*) and (*b*) or has done any of the acts mentioned in clauses (*c*), (*d*) and (*e*) of sub-section (*2*). It should be noted that the section says "notwithstanding any agreement, usage, decree or order of a Court of law . . ." It does not contain the words "or any other law for the time being in force". Therefore even assuming that the plaintiff is a protected tenant in respect of the suit land, the termination of his lease was not in accordance with any usage, agreement or decree. The lease was declared null and void under the Watan Act and the Resumption Rules. Section 20 gives relief to the tenant against termination of the tenancy for non-payment of rent when the landlord has filed a suit or other proceedings to eject the tenant. Those provisions clearly do not apply to the present case and there are no other provisions in either Act which have any relevancy.

6. Secondly, assuming for the moment that the provisions of these enactments are relevant it should be contended that these Acts do not apply to the Crown. It is an accepted principle of English law that the Crown is not bound by a Statute unless named expressly or by necessary implication. (Craies : Statute Law, 4th Edition, 360 ; Maxwell : Interpretation of Statutes, 8th Edition, 120.) A series of decisions of the Bombay High Court has established

that the rule applies equally in India. (Secretary of State *v.* Bombay Landing and Shipping Co., 5 Bom. H. C. R. O. C. J., page 23; Ganpat *v.* Collector of Kanara, I. L. R. 1 Bom. 7 at page 9; Secretary of State *v.* Mathurbhai, I. L. R. 14 Bom. 213; Hiranand *v.* Secretary of State, I. L. R. 58 Bom. 635; Secretary of State *v.* Municipal Corporation of Bombay, I. L. R. 59 Bom. 681.) The Crown is not expressly named in these Acts. The only question is whether the Crown can be deemed to have been named thereon "by necessary implication". The test laid down in Garton Local Board *v.* Prison Commissioner (1904 2 K. B. 165) is whether the particular enactment would be unmeaning or could not be given effect to unless the Crown was held bound by the Statute. Applying this test in the present case, it cannot be said that the provision of these enactments would be unmeaning and cannot be given effect to unless the Crown is also deemed to have been bound thereby. The decision in I. L. R. 59 Bom. 681 can be distinguished for in that case the Crown was bound to pay taxes and was for that reason held bound by the provision of section 212 of the Bombay (City) Municipal Act, 1888. No such considerations arise in this case.

7. For these reasons it should be urged that the suit fails and must be dismissed with costs.

New file
S. Bel. 14/5
15/10/45

~~55~~ 13

# Decree.

In the Court of the Joint Civil Judge,

Senior Division, Belgaum.

Ex. No.19.

Regular Civil Suit No. 477 of 1944.

1. Padmanna Shivappa Shidnale, age 65, occupation agriculture, Jain, residing at Kothali, Taluka Chikodi, Dist. Belgaum. ... ... ... ... ... ... ... Plaintiff.

Vs.

1. The Province of Bombay.
2. Jinnappa Bharmanna Shidnale, age 50, agriculture, Jain, of Kothali.
3. Vasu Bharmanna, age 35, rest -do-.
4. Bhima Bharma Kothale, age 30, rest -do-. ... ... ... ... ... .. Defendants.

Claim ...For Court fee Rs. 6-12-0
and for Jurisdiction ...5-0-0.

Herein, the above-mentioned plaintiff begs to submit as under:-

(1) (a) R.S.No.22/1 of Kothali, Tal. Chikodi measuring 4 acres Akar Rs.4-2-4 its boundaries being:-

To the East: The other portion of the same number belonging to Dada Koli.

To the South: The R.S.No.19 of the same village.
To the West.:

To the North: The R.S.NO. 21 of the samevillage.

(b) The second patti in R.S.No.22/3 measuring 5 acres Akar Rs.5-3-0. It boundaries being:-

To the East: The other portions of the same
To the West : number of Dada Koli.

To the South: R.S.No.19 and 23 of the same village.

To the North: R.S No.21 and 32 ofthe same village.

2. (c) The suit lands mentioned in para 1 are Japti Inam Sanadi lands of the village Kothali belonging originally

to and in possession of Sattu Narasing Koli of Kothali, Taluka Chikodi District Belgaum. His Sanadi services were continued in the possession of the said Sattu as discharged Sanadi lands. The said Sattu leased the suit lands to the plaintiff and his brother Bharma Shivappa Shidnale for a period of 25 years by taking a registered rent note from Shake 1848 to 1872 on condition that the plaintiff and his brother were to pay Rs.50 as cash rent per year to the said Sattu as Landlord during the said period of 25 years and to deliver back the possession at the close of the 25th year in Shake 1873 Chitra.

The rent note was executed and registered on 31st August 1926 and all the conditions are mentioned in the said rent note and accordingly the plaintiff andhis brother have been in possession as tenant of the suit lands as per the said rent note.

(b) The said Sattu died without any issues on 29.3.1935 leaving behind as his heir his only widow Krishnabai Bhratar Sattu Koli of Kothali. The plaintiff and his brother paid the rent as per the said rent note every year to Sattu's widow Krishnabai who as heir consented and accepted the said rent note in favour of the deceased husband. This widow Krishnabai Bhratar/Koli Sattu died on 3.12.1939 without any direct heir to heir to herself or her husband Sattu's collaterals viz., (1) Shankar Dada Koli (2) Appanna, Tatya, Shivaram Balu Koli of Kothali claimed to be the heirs of the deceased Sattu to the Sattu's lands. These claimants applied to the Prant Officer N.D.Belgaum in May 1940 under the Watan Act for restoration of the suit lands alleging that the plaintiff's lease is an alienation and is therefore null and void. The Prant Officer directed the -- restoration of the suit lands to the applicant under the Watan Act holding that the alienation is null and void. The plaintiff being aggrieved by this decision preferred an appeal to the Collector of Belgaum and the Collector Belgaum decided in appeal No. W.T.P. 2353 dated 26.4.1943 that the alienation being null

and void the suit lands should be resumed and entered as Government Waste lands for eventual disposal. The plaintiff preferred an appeal to the Bombay Revenue Tribunal in appeal No. 30 of 1944 The Bombay Revenue Tribunal dismiss the plaintiff's appeal and confirmed the decision of the Collector on 11.2.1944. The plaintiff thinks that these Revenue Courts'-decisions-are-wrong and ultra-vires and that plaintiff's lease is binding on defendant No.1. The plaintiff is, therefore, compelled to prefer this Civil Suit for the reliefs claimed in this suit.

(c) The plaintiff's brother Bhrama Shivappa Shidnale died about 7 or 8 years ago and defendants Nos. 2 to 4 are his sons who are contenants with plaintiff and who have an interest in the said lease. They are, therefore, added in this suit as defendants Nos. 2 to 4 as they are not available now to join as co-plaintiffs.

(d) The Government Defendant No.1 has directed through its officers to resume possession of the suit property from the plaintiff, the plaintiff has been compelled to file this suit for injunction against defendant no.1 to proceed with the taking up of possession of suit property from plaintiff during the period of lease.

(e) The plaintiff is a small holder. He is in continu--ous possession of the suit property since 1925-26. He cannot be evicted from the suit property under the Small Holders' Relief Act and also under the Tenancy Act. Deft. No.1 is bound to protect plaintiff's possession.

3. The cause of action for declaration arose on the respective dates of the decisions of the Prant Officer, N. D., Collector of Belgaum and the Bombay Revenue Tribunal i.e. in 1941, 26.4.1943, 11.2.1944 respectively, and for injunction from the demand of possession by defendant No.1 from the plaintiff i.e. on a day in April 1944.

4. This suit being against the Bombay Provincial Government Bombay Provinces, Bombay, the First Class Sub-Judge's Court has the special jurisdiction to try this suit.

5. The suit being for declaration with consequential relief for injunction, the court fee is ~~xx~~ paid on the said reliefs. Stamp of Rs. 6-4-0 for declaration and stamp of annas eight for injunction is paid, and for jurisdiction, the relief being for the declaration with consequential relief, is Rs.5/-.

6. The parties reside within thelocal jurisdiction of this court and the property in suit and the Revenue decisions concern the subject of the suit property situated within the local jurisdiction of this Court, this court has jurisdiction to try thissuit:

6A. Notice of the suit is given to the defendant no.1 as per the requirements of law.

7. The plaintiff is willing to amend the plaint and add as co-plaintiffs if any of the defendants 2 to 4 desire to join as plaintiffs in this suit.

The plaintiff, therefore, prays that:-

1. As the registered rent note executed by plaintiff and his deceased brother Bhanu on 31.8.1926 in favour of the deceased Satku Koli isnot an alienation under the Watan Act and Watan Act does not apply to the said terms of the rent note and whereas plaintiff is not liable to be dispossessed under the Small Holders' Relief Act and the Tenancy Act, it b declared that defendant No.1 is not entitled to recover possession of the suit property from the plaintiff during the period of the said lease.

2. The defendant No.1 be further prohibited from taking possession of the suit property during the period of lease.

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7-59

3. The plaintiff be awarded his costs from deft.1.

4. The plaintiff be permitted to amend the plaint if s
required during the suit.

5. The plaintiff be given any other reliefs to which
he may be entitled to in this suit.

decree the suit accordingly.

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Order.

Plaintiff is not present in person. His
pleader, [illegible] application for adjournment. (Vide exx.
21 and 25). The Government Pleader for Defendant No.1 is
present in person. Defendants Nos. 2,3 and 4 are
absent. Therefore, under Order 17, rule 2 and Order 9 rule
8, Civil Procedure Code, I make an order that the suit be
dismissed. Plaintiff do pay the costs of Defendant No.1 and
bear his own costs.

M. D.R.Ugrankar.

3.12.1945. Jt. Civ.Judge, S.D. Belgaum.

Bill of costs.

| | PLAINTIFF. | DEFENDANT NO.1 |
|---|---|---|
| Study of plaint. | 3-12-0 | 0-0-0 |
| " " power | 1-4-0 | 0-0-0 |
| " " exhibits | 1-14-0 | 3-2-0 |
| Pleader's fees. | | |
| 1/4th of claim or Juris. | ~~xxxxx~~ 15-0-0 | ~~xxxxx~~ 15-0-0 |
| Witness batta. | 0-0-0 | 0-0-0 |
| Copying ... | 0-4-6 | 0-0-0 |
| Process ... ~~xxxxx~~ | 7-8-0. | 0-0-0 |
| Total Rs. | ~~xxxxxxx~~ 32-10-6 | ~~xxxxxxx~~ 18-2-0. |
| Rejected costs. | | |
| On plaint. | 0-0-0 | 0-0-0 |
| On pleader's fees. | 0-0-0 | 0-0-0 |
| On Process fees. | 0-0-0 | 0-0-0 |
| On exhibits. | 1-14-0 | 3-2-0 |
| | 1-14-0 | 3-2-0 |
| Balance | ~~xxxxxxx~~ 30-12-6. | ~~xxxxxxx~~ 15-0-0. |

Given under my hand and the seal of the Court, this
3rd day of December 194

M.D.R.Ugrankar.
Jt.Civ.Judge, S.D

19-52

Suits:

Belgaum.

For a declaration that Government is not entitled to recover possession of the suit land from the Plaintiff for the duration of the lease executed by him and his brother in favour of the deceased Sattu Narsinga.

GOVERNMENT OF BOMBAY,
Legal Department,
Resolution No. 1582
Bombay Castle, 25th February 1946.

§ Read Government, Resolution Legal Department, No.5311, dated the 18th July 1945.

Endorsement from the District Government Pleader, Belgaum No. O.S.477/44, dated the 14th February 1946, forwarding a copy of his letter No.O.S.477/44, dated the 14th February 1946, to the Collector of Belgaum and stating that the suit noted in the margin was decided by the Joint Civil Judge(S.D.) Belgaum, on the 3rd December 1945, when the following order was passed:-

| | |
|---|---|
| In the Court of the First Class Subordinate Judge, Belgaum. | "The plaintiff is not present, in person. His pleader, Mr. Mandgi retired for want of instructions after the disposal of his application for adjournment. (vide exx. 21 and 23), The Government Pleader for Defendant No.1 is present duly instructed. Defendants Nos.2,3 and 4 are absent. Therefore, under Order 17, rule 2 and Order 9 rule 8, Civil Procedure Code, I make an order that the suit be dismissed. Plaintiff do pay the costs of defendant No1, and bear his own costs." |
| Civil Suit No.477 of 1945. | |
| Padmannappa Shivappa Shindale .. Plaintiff; | |
| v s. | |
| 1. The Provincial Government of Bombay, | |
| 2. Jinnappa Bharmanna Shidnale; (3) Vasu Bharamanna; (4) Bhima Bharma Kothale .. .. .. .. .. .. .. Defendants. | |
| Claim (i) Rs 6-12-0 for Court-fee, (ii) Rs. 5- 0-0 for jurisdiction. | |

and forwarding uncertified copies of the judgment and decree.

RESOLUTION:- The result of the suit is recorded.

By order of the Governor of Bombay,

R.M.Mehta,
Assistant Secretary to Government
Legal Department.

Original

To

The Revenue Department,
The Commissioner, S.D.
The Collector of Belgaum.

Ms.

Submitted for Signature.

A.S

Received on 21.12.1944.
Registered on 22.12.1944.
Decided on 18. 3.1947.
Duration- 2 Y. 2 M. 28 days.

IN THE COURT OF THE JOINT CIVIL JUDGE, S.D.?
AT BELGAUM.

Exh. 35.

Civil Suit No.477 of 1944.

pleaders.

:.A.A.Mandagi.

1. Padmanna Shivappa Shidnale,age 65,occ.
Agri.,Jain,residing at Kothali,Tal.
Chikodi,Dist.Belgaum ... ... ... ... ... Plaintiff.

Vs.

:.B.V.Jakati
Govt.Pleader.

1.The Provincial Government,The Bombay
Province, Bombay.

xparte

2.Jinnappa Bharmappa Shidnale,age50,
agri.,Jain of Kothali,Tal.Chikodi Dist.
Belgaum.

3. Vasu Bharmanna,age 35,agri.,Jain,Kothali,
Tal.Chikodi..

4.Bhima Bharma Kothale,age 30,agri.,Jain
rest do. ... ... ... ... ... ... ... Defendants.

Claim Rs. 6-12-0 for court fee and
5/- for jurisdiction.

The plaintiff sues to obtain a declaration that the defendant no.1, The Province of Bombay, is not entitled to the possession of the plaint lands from the plaintiff and defendants nos. 2 to 4 during the period of the lease for 25 years created by a registered Kabulayat dated 31st August 1926 passed by him and the father of the defendants Nos. 2 to 4, since deceased, in the name of the original owner, one Sattu Narsing Koli of Kothali in Chikkodi Taluka and for an injunction restraining the deft.no.1 from taking possession of the said lands and to recoger the costs of suit.

The plaintiff alleges in the plaint that the plaint lands- R.S.Nos. 22/1, and 22/3 of Kothali Village in Chikkodi Taluka originally belonged to one Sattu Narsing Koli, who was a discharged sanadi, that the lands were sanadi lands granted for sanadi service, that the services were dispensed with by the Government but the lands were continued in the possession of Sattu as discharged sanadi lands, that the said Sattu leased the plaint lands to the plaintiff and his brother since deceased for a period of 25 years, from Shake 1848 to Shake 1872 at an annuak rental of Rs.50/- and took from them a registered Kabulayat, dated 31st August 1926 and delivered possession of the lands. That Sattu died dn 29.3.1935 leaving behind him his wife Krishnabai as heir, that after his death, the plaintiff paid rent to the said Krishnabai who died on 3.12.1939, that on her detah, one Shankar Dada Koli, Appanna Tatya Koli and Shivram Bala Koli claiming to be the next reversioners of the deceased Sattu applied to the Prant Officer for restoration of the suit lands to them under the Watan Act on the ground that the lease in question amounted to an alienation of Watan Property to outsiders, that the Prant Officer directed the restoration of the lands holding that the lease became null and void after the death of Sattu, that the plaintiff preferred an appeal to the Collector, Belgaum, who upheld the order passed by the Prant Officer and ordered the actual resumption of possession of the lands and their entering in the village record as Government waste lands for ultimate disposal according to law, that the plaintiff preferred an appeal to the Bombay Revenue Tribunal which however confirmed the decision of the Collector on 11.2.1944, that the plaintiff contends that these orders of the Revenue authorities were wrong and ultra vires, that the plaintiff lease was binding upon the Govt, and that the Govt. have no powers to resume possession of the plaint lands before the expiry of the period of the lease, that besides the plaintiff was a Small Holder in continuous possession of the plaint lands since the year 1925-26, that he cannot be evicted under the Small Holders Protection Act and

the Tenancy Act, that the cause of action arose in 1931, and on 26.4.1943 and 11.2.1944 when the orders of the Prant Officer, The Collector and the Revenue Tribunal were -- respectively passed. Hence, the suit.

The deft.no.1 in its written statement exh.15 contends that the suit was barred under Sec.4(a) clause 1,3 and 4 of the Bombay Revenue Jurisdiction Act, that the suit as framed was virtually to have the order of the Revenue Officers set aside, that as it has not been filed within one year from the date of the Prant's order, it was barred under Art.14 of the Indian Limitation Act, that in spite of the fact that the services have been dispensed with, the plaint lands have retained the characteristics of sanadi lands, that under the proviso to rule 4 of the Resumption rules, the Collector has powers to deal with these holdings, that the order of resumption was therefore valid and intra vires, that the provisions of the Small Holders Protection Act or the Tenancy Act do not apply to the facts of this case, that the plaintiff is not Small Holder. that he is not entitled to any of the reliefs sought, that the suit should be dismissed and the Government's costs awarded.

The defendants 2 to 4 have remained absent and ex-parte though duly served. On the above pleadings, the following issues were framed at exh.19 by Mr.D.R.Ugrankar.

Issues.

1. Is the suit barred under Sec.4(a) clauses 1,3 and 4 of the Bombay Revenue Jurisdiction Act?

2. Is the suit barred under Art.14 of the Indian Limitation Act ?

3. Is the lease valid and binding on deft.1 after the life time of Sattu Narsinga Koli ?

4. Is the resumption of the lands by pltff deft.1shown to be illegal and ultra vires ?

5. Is the pltff.a Small holder and entitled to the protection under the Bombay Small Holders' Protection Act and the Tenancy Act as against deft,no.1?

(6) What reliefs, if any, is plaintiff entitled to ?

Findings.

(1) Yes;under Sec.4(a) clauses I and III of the Revenue Jurisdiction Act. (2) Yes. (3) No. (4) Not shown (5) Not proved. (6) suit dismissed with costs.

Reasons.

No oral evidence has been led on either side.It is common ground that the plaintiff lands are discharged Shet Sanadi lands. The learned pleader for the plff. admitted that the services were dispensed with under the resumption rules published in Govt.Notification No.10336,October 12,1908,given at pages 248-249 of Padnis, Watan Act, 1936 Edition. The plff.'s pleader argued that the effect of resumption ever was to convert the lands into Maitav benure so that Sattu Narsinga Koli, the discharged sanadi was at liberty to create the lease in question. This argument was based upon the rulings in 12 B.L.R.577 (Mallappa Ramappa Kuri V. Maslingappa Chavdappa) and 35 B.L.R.114(Vishnu Shankar Kulkarni V. Shankar Vasudeo). The facts of the first mentioned case were as follows:-" In 1865, a Shet sanadi on being discharged without fault from his office by Govt., was under the rules then in force, allowed to remain in possession of the shet sanadi lands, but full survey assessment was imposed thereon. The deft.no.2 who was appointed the new shet sanadi, was remunerated from the extra assessment levied upon the shet sanadi lands. In 1905, the Govt. resumed the lands and handed them over to deft.no.2. The resumption rules which were in force in the year 1865 reads as follows:-

Rule 5:-" Whenever a shet sanadi is discharged without fault because the service is no longer required, the land will remain in his possession subject to the survey assessment and no further demand can be made." The order passed by the Collector on the 28th February 1866 was as follows:-"Your proposal is approved.But the wahiwat of the lands should be with the heirs of the deceased. The assessment to be paid to make up the deficiency should bepaid and the excess amount shall be

credited to Govt. Justice Chandavarkar observes as follows in his judgment: "Both the orders passed and the action taken under the rule had in law the effect of converting the land from a shet sanadi Watan into a Rayatawari holding and investing the holder of the land with the rights of an ordinary occupant, entitled to it so long as he paid the survey assessments"

It is quite clear from the above, that the decision in Yellappa V. Marlingappa was based upon rule no.5 of the resumption rules in force in the year 1865". The Govt. modified these rules by G.R.No.1364 of 1878 and ordered resumption of the lands by eviction or continuance of the same subject to such conditions as the Collector or the Govt.may impose under the powers conferred by those rules. G.R.Nos.6891 of 1892 and 4926 of 1893 denied the Hereditary right of the sanadis to their watan and directed that the alienation of sanadi lands be dealt with under the rules pube published in G.R.No.1364 of 1878. The rules of resumption first published in G.R.No.1364 of 1878 were modified and published in 1898 and again in G.R.No.2702 of 1902 and they are now finally published in G.R.No.10000 of 1908".(Vide Fadnis Watan Act Appendix XII page 240, fifth edition). These new rules are given on pages 248 and 249 of the Fadnis' Watan Act. Proviso to rule 4 reads as follows:-

"Provided that if the Collector is at any time satisfied that the service in respect of which any such land are held, is no longer performed or that its performance is no longer necessary .....The Collector may in his discretion direct either (1) the resumption of such lands or (2) the continuance of the same, subject to such new conditions as he shall deem fit to impose or (3) the resumption of a portion of such lands and the continuance of the rest thereof, subject to such conditions as aforesaid".

Rule 5:- "When the sanad issued in confirmation of any service commutation settlement expressly authorizes the alienation or transfer of the service lands, the same shal

be continued without question to any lawful holder thereof on fulfilment of the terms of the sanad. In every other case contemplated by No.2 of these rules, and in every case contemplated by Nos.3 and 4 of these rules, if any land held for service or any of the profits thereof shall at any time be alienated contrary to the provisions of Bombay Act III of 1874 or of any other law for the time being in force, or in the case of land to which the ~~previsions of~~ provisions of Bombay Act III of 1874 do not apply, if the same or any of the profits thereof shall be alienated or in any way encumbered without the previous sanction of Government. The said land shall, if the Collector deem fit, be forthwith resumed any thing in the said rules to the contrary not withstanding.

Rule 6:- It shall be lawful for the Collector, whenever it may be necessary, in carrying out any of the previsions of No.4 or No.5 of these rules (a) to summarily evict any person wrongfully in possession of any land or (b) to levy any rent due by any person in the manner that may be prescribed for the time being in force for the levy of a Revenue demand. Explanation:- For the purposes of the rule any person in possession of land the resumption of which has been directed under No.4 or No.5 of these rules, shall be deemed to be a person wrongfully in possession thereof."

In noneof the resumption rules of the years 1908 is there any provision corresponding to rule No.5 of the rules in force in the year 1865. The words " and no further demand can be made" which occurred at the end of rule 5 of the old rules, have been omitted in the new rules. As pointed out by the Revenue Tribunal in its order, dated 11th February 1944 the services were not permanently dispensed with but held in abeyance under administrative orders which make no difference in the legal position (Vide exh.32). Under the rules of 1908, the services of the discharged sanadis are not ordinarily permanently dispensed with but they are held in abeyance.

The Government have retained the right to call upon a discharged sanadi or his heirs to render the services when deemed necessary. The powers of the Government to deal with the sanadi lands under the rules made under Act XI of 1852 or Bombay Acts Nos.II and VII of 1863 (The last two acts are now repealed) are expressly reserved by Sec.I of the Hereditary Offices Act. So, the ruling which was based upon the wording of the rules in force in 1865, will not hold good in the case of sanadi lands governed by a different set of rulings. It is not clear from the report of the case in Vishnu V. Shankar as to whether the resumption of the sanadi lands in that case was under the old or the new rules. It is however, presumed that the said case was governed by the old rules of resumption which were in force prior to 1878 The fact that the ruling in 12 B.L.R.577 was relied upon as authority without considering the resumption rules of 1908 goes to show that the case in Vishnu V. Shankar was on all points with the case in Yellappa V. Marlingappa. Under the circumstances, of the case, I hold that the lands in suit have not been converted into Raitav lands inspite of the fact that the services have been temporarily suspended and full assessment levied. The lands still retain the old character of sanadi lands and this fact has been shown in the Village combined form (Vide Exhs.5 and 6

A lease of immoveable property is a transfer of an interest in the said property and a lease for a period of 25 years which requires to be made by a registered instrument certainly amounts to an alienation (Vide Madhavrao V. Raghunath, I.L.R. 47 Bom. 798). Accordingly, the lease created by Sattu Narsing Koli in the year 1926 for a period of 25 years comes under the mischief of rule 5 of the resumption rules of 1908 and under rule 6 the Collector has the right to summarily evict any person wrongfully in possession of the land.This is on the basis that the watan act does not apply to shet sanadi lands.If,relying upon the rulings in Limbaji V.Rama (1898,P.J.,page 127) and Vishnu V.Shankar

(35 Bom.L.R.114) we hold that shet sanadi lands are watan property, governed by the provisions of the Bombay Hereditary Offices Act,1874, then also the lease in question would offend against Sec.5 of the said Act and the Collector had authority under Sec.9 to declare the alienation as null and void and to summarily resume possession under S.11A. The Prant Officer,took action at the instance of the reversionary, heirs of Sattu Narsing Koli and he was within his rights in passing the order he did.It is clear from this that the plff.will succeed only if he can show that the plaint lands have been converted into Raitar lands and this he has not been able to establish.

The result is that the orders passed by the Revenue authorities are correct and intra vires and that the plff cannot get over them by so framing his suit as to put the prayer in the form of a declaration and injunction. In this case,the plff.has filed the suit on 21.12.1944,i.e. more than one year from the date of the Prant's order as well as the order of the Collector, but within one year from the order of the Revenue Tribunal.However,the suit appears to have been barred by the law of Limitation in view of the rulings in 44 Bom.451(Ganesh Shesho Deshpande V.The Secy.of State for India) and 22 Bom.L.R.146 'Chaturbhoy Vs.The Secy. of State) The orders passed by the Revenue officers being legal and intra vires,it was necessary for the plff.to,get them set aside by filing a suit within one year from the date of the Prant's order(Vide Sec.11 of the Revenue Jurisdiction Act).

Now,coming to the deft.1's plea of bar of suit,under Sec.4(a) of the Revenue Jurisdiction Act,I think the suit is barred under clauses I and III thereof in view of the fact that the orders passed by the Revenue authorities were legal and intra vires.Sec.5 of the said Act does not come into play and so the bar of suit under Sec.4(a),Clauses I and III applies.Issue No.5 was not proved at the time of arguments.In fact,no evidence was led to prove that the plff.was a Small Holder.I record my findings as above upon the issues raised and pass the following order.

O R D E R.

Suit dismissed.Plff.to bear his own costs and pay the costs of the Deft.No.1. Defts. 2 to 4 to bear their own costs,if any.

Sd.M.S.Bagali.
Civil Judge,S.D.

18.3.1947.

29-9

Suits:
Belgaum.
For a declaration that Government is not entitled to recover possession of the suit land from the Plaintiff for the duration of the lease executed by him and his brother in favour of the deceased Satta Narsinga.

GOVERNMENT OF BOMBAY,
Legal Department,
Resolution No. 4178
Bombay Castle, 24th April 1947.

Read Government Resolution, Legal Department/No. 5311, dated the 18th July 1945.

Endorsement by the District Government Pleader, Belgaum, No. O. S. 477/44, dated the 19th March 1947 - Forwarding an uncertified copy of the judgment and stating that the suit noted in the margin was decided by the Civil Judge, Senior Division, Belgaum, on 18th March 1947, when the following order was passed :-

In the Court of the First Class Subordinate Judge, Belgaum.

Civil Suit No. 477 of 1945.

Padmannappa Shivappa Shidnale - Plaintiff;

Vs.

1. The Provincial Government of Bombay;
2. Jinnappa Bharmanna Shidnale
3. Vasu Bharmanna;
4. Bhima Bharma Kothale

} Defendants.

Claim - (i) Rs. 6- 12 - 0 Court fee
(ii) Rs. 5 - 0 - 0 for jurisdiction

"Suit dismissed Plaintiff to bear his own costs and pay the costs of the Defendant No. 1. Defendants No. 2 to 4 to bear their own costs, if any."

RESOLUTION:- The result of the suit is recorded.

By order of the Governor of Bombay,

Subd. for signature.

KBB 24/4
S. A. S

Original R. M. Mehta,
Assistant Secretary to Government.

To
The Revenue Department,
The Commissioner, Southern Division,
The Collector of Belgaum

Issued 24/4

6Kc.
23.4.

2/134

L.C.P.—J 385—900—11-26—P2

Spl.—form No. 8.

No. 3218 of 192.

Bombay, 26th November 1947

Subject F.A.219/47 in Reg.Suit No.477/44 (Padmanna Shivappa Shidnale Vs.The Province of Bombay).

To

The Collector of Belgaum.

Sir,

I have the honour to forward, herewith, a copy of Memorandum of First Appeal in the case noted above and to request the favour of your applying for the sanction of Government for the defence of the same and giving me such detailed instructions as you may deem necessary.

2. The High Court's notice served on me this day in the above case accompanies.

3. If any objection, under Rule 22, Order 41, Civil Procedure Code, against the decree of the Lower Court is to be urged, the necessary sanction of Government for its filing may be obtained early, as it must be filed in the High Court within one month from the date of service of notice.

4. The District Government Pleader, who may have conducted the above case in the Lower Court, may be asked to inform me immediately the numbers of important exhibits which will have to be relied upon in support of the case on behalf of Government at the time of its hearing here.

5. A copy of the *Roinama* as required by Government Resolution, Legal Department, No. 298, dated the 4th May 1911 and a certified copy of the notice given by plaintiff under section 80, Civil Procedure Code may also be sent to me.

6. I shall also thank you to send me 4 copies of the plan showing the exact position of the land in dispute.

~~acquired in relation to its surrounding situation and the several instances of sale relied on in the lower Court.~~

I have the honour to be,
Sir,
Your most obedient servant,

Sd. S.G.Patwardhan,
Government Pleader, High Court.

No. 3219

14214
A 28/11/47

Office of the

Government Pleader, High Court, A.S.,
Bombay, 26th November 1947.

Copy, with a copy of the notice, forwarded, with compliments, to the Remembrancer of Legal Affairs, Bombay, for information.

Government Pleader, High Court.

A

m/d. with pp: (S. Bel. 2/12/47).
2. Await collectors report

3395-97

G.C.P.—(M) 164—500—8-46
G.R., J.D., No. 4398 dated 3-7-16

[Spl—H.C. A.S. Civil 20 6

# IN HIS MAJESTY'S HIGH COURT OF JUDICATURE, APPELLATE SIDE, BOMBAY

APPEAL No. 219 F 1947 FROM Original DECREE

Padmanna Shivappa Shirdad of Kothali Tal Chikodi. } Appellant

*versus*

The Province of Bombay. } Respondent

Claim—Rupees 5/-

No. 5036 OF 194

From

THE DEPUTY REGISTRAR,
High Court, Appellate Side, Bombay;

To The Secretary Legal Department. Govt of Bombay

Bombay, 7th November 1947.

Sir,

The Appellant abovenamed having presented an appeal from the decision of the Senior Division Civil Judge of Belgaum in Reg. Suit No. 477 of 1944, and the same having been registered in this Court, and this Court having on 5th September 1947, ordered notice to issue, I have the honour to inform you that the hearing of the said appeal will take place on the 9th day of February 1948, or on any subsequent day which to this Court may seem convenient; and that if no appearance is made on your behalf either ~~in person or~~ by a pleader of this Court or agent duly authorized and instructed, it will be heard and determined in your absence.

I have the honour to be,
Sir,
Your most obedient servant
Sd/- S. H. Belavadi

Deputy Registrar

~~105~~ 35 [illegible]

Suits.
Belgaum.

For a declaration that Government is not entitled to recover possession of the suit land from the Plaintiff for the duration of the lease executed by him and his brother in favour of the deceased Sattu Narsinga.

GOVERNMENT OF BOMBAY,
Legal Department,
Resolution No. 1845
Bombay Castle, 23rd February 1948.

Read G.R., L.D., No. 4178, dated the 24th April 1947.

Endorsement from the Government Pleader, High Court, Bombay No. 3219, dated the 26th November 1947 - forwarding copy of his letter to the Collector, Belgaum and a copy of the notice of Civil Appeal ~~Mark~~ No. 219 of 1947 served on him.

In the Court of the First Class Subordinate Judge, Belgaum.
Civil Suit No. 477 of 1945.

Padmannappa Shivappa Shidnale - Plaintiff;
Vs.
1. The Provincial Government of Bombay;
2. Jinnappa Bharmanna Shidnale
3. Vasu Bharmanna
4. Bhima Bharma Kothale
- Defendants.

Claim (i) Rs. 6-12-0 for Court fee
(ii) Rs. 5-0-0 for jusisdiction

Endorsement from the Collector of Belgaum, dated the 3rd January 1948, forwarding copy of his letter to the Commissioner stating that the plaintiff in the suit noted in the margin ~~has filed civil suit noted in the margin~~ has filed civil appeal No. 219 of 1947 in the High Court, Bombay, and requesting sanction to the defence of the appeal.

Endorsement from the Commissioner, Southern Division, No. LST 338, dated the 5th February 1948, forwarding the above with his concurrence and forwarding papers of the case.

RESOLUTION:- Sanction is accorded to the defence of Civil Appeal No. 219 of 1947, High Court, Bombay, on the lines of the brief accompanying G.R. L.D. No. 5311, dated the 18th July 1945, and the favourable grounds contained in the judgment of the Civil Judge, Senior Division, Belgaum, dated the 18th March 1947

By order of the Governor of Bombay,

Original

R. M. Mehta

R. M. MEHTA,
Assistant Secretary to Government.

Subd for sign.
Orders at p. 12
[illegible]
3/2
AS.

To
The Revenue Department,
The Commissioner, Southern Division,
The Collector of Belgaum,
The District Government Pleader, Belgaum,
The Government Pleader, High Court, Bombay (with paper of the case) ~~including a copy of the brief~~).

Issued
USP
7/2/2

10Kc. 21.2.

14

Bel. 1145

To

The Revenue Department,
The Collector, Belgaum,
The Municipality, Belgaum,
The Collector of Belgaum,
The Executive Engineer,
The Secretary, Belgaum Taluka Local Board,
The Vice-President, Taluka Development Board, Belgaum.

Assistant Secretary to Government

BOMBAY,

By order of the Governor of BOMBAY,

Civil Judge, Senior Division, Belgaum, dated the 17th March 1945, and the Revenue Tribunal in the Judgment of the Joint Accountant, R.D. No. 5811, dated the 14th July 1945, in Civil Appeal No. 219 of 1944, High Court, Bombay, on the files of the Revenue Department, Government of Bombay, dated the 25th September 1945, and the Order in Council, dated the 7th November 1945, in the matter of the application of the Belgaum Taluka Local Board, Belgaum, for the grant of permission to acquire certain lands for the purpose of a public recreation ground in the village of Hindalga in the Belgaum Taluka of the Belgaum District.

Order No. 2519, dated the 30th November 1945 - For certain Books of Accounts, to the Collector, Belgaum and a copy of the notice of Civil Appeal No. 219 of 1944 in the High Court, Bombay, to the Secretary, Belgaum Taluka Local Board, Belgaum.

Government Resolution No. 4176, dated 23rd March 1945 - Forwarding Books of Accounts, etc., to the Collector, Belgaum and a copy of the notice of Civil Appeal No. 219 of 1944 in the High Court, Bombay, to the Secretary, Belgaum Taluka Local Board, Belgaum.

| | |
|---|---|
| Civil Suit No. 477 of 1945 | In the Court of the Joint Judge, Belgaum. |
| Civil Appeal No. 219 of 1944 | Appellate Judge, Belgaum. |
| Civil Application No. 2519 of 1945 | |
| 1. The Provincial Government of Bombay. | Plaintiffs. |
| 2. Laxman Bhimrao Jadhav. | Defendants. |
| 3. Laxman Ramanna Shirsath. | |
| 4. Rama Bhaira Kolhale | |
| 5. Ganu Ramanna Shirsath. | |
| Plain (1) Rs. 5-0-0 for Publication (2) Rs. 5-0-0 for Court Fee | |

Civil Suit No. 219 of 1944 in the High Court, Bombay, was filed by the Secretary, Belgaum Taluka Local Board, Belgaum, against the Collector of Belgaum, the Executive Engineer, Belgaum, the Revenue Department, Government of Bombay and the Provincial Government of Bombay, for a declaration that the Order in Council, dated the 7th November 1945, in the matter of the application of the Belgaum Taluka Local Board, Belgaum, for the grant of permission to acquire certain lands for the purpose of a public recreation ground in the village of Hindalga in the Belgaum Taluka of the Belgaum District, is void and inoperative and for a perpetual injunction restraining the Defendants from acting in pursuance of the said Order in Council.

Civil Application No. 2519 of 1945 was filed by the Secretary, Belgaum Taluka Local Board, Belgaum, for the grant of an interim injunction restraining the Defendants from acting in pursuance of the said Order in Council pending the hearing and final disposal of the said Civil Suit No. 219 of 1944 in the High Court, Bombay.

Mr. [illegible] appeared on behalf of the Plaintiffs in the said Civil Suit No. 219 of 1944 in the High Court, Bombay, and in the said Civil Application No. 2519 of 1945 in the Court of the Joint Judge, Belgaum, and the Government Pleader, Mr. [illegible] appeared on behalf of the Defendants in the said Civil Suit No. 219 of 1944 in the High Court, Bombay, and in the said Civil Application No. 2519 of 1945 in the Court of the Joint Judge, Belgaum.

2/45

10737

**Decree.**

In the Court of the Joint Civil Judge,

Senior Division, Belgaum.

D.G.P's letter No. 0.S.477 - 15-12-47

Regular Civil Suit No. 477 of 1944 Exh.

1. Padmanna Shivappa Shidnale, 65 Agriculturist, Jain, residing at Kothali Taluka Chikkodi, District Belgaum.....Plaintiff.

Vs.

1. The Provincial Government, The Bombay Province.
2. Jinnappa Bharmana Shidnale 50, Agri, Jain, of Kothali, Tal. Chikkodi, Dist. Belgaum
3. Vasu Bharmanna, 35, Agri. Jain Kothali, Tal. Chikkodi.
4. Bhima Bharma Kothali, 30 resd, do.....Defendants.

Claim Rs 6-12-0 for Court fee and Rs 5/- for jurisdiction.

Received on :- 21-12-1944.

Registered on :- 21-12-1944.

Plaintiff states as under :-

(1) (a) R.S.No.22/1 at Kothali Taluka Chikkodi measuring 4 acres Akar Rs 4-2-4 its boundaries being :-

To the east : The other portion of the same number belonging to Dada Koli

To the South / To the West : The R.S.No. 19 of the same village.

To the North: The R.S.No.21 of the same village.

(b) The second patti in R.S.No. 22/3 measuring 5 acres akar Rs 5-3-0 its boundaries being :-

To the east / To the west : The other number of portions of the same Dada Koli.

the south : The R.S.No.19 and 23 of the same village.

To the north : R.S.No.21 & 32 of the same village.

2. (a) The said lands mentioned in para 1 are Japti Sanadi inam lands of the village Kothali belonging originally originally

to and in possession of Sattu Narsing Koli of Kothali Taluka Chikkodi District Belgaum. His Sanadi services were -- dispensed with by the defendant and said lands were -- continued in the possession of the said Sattu leased the said lands to the plaintiff and his brother Bhurma Shivappa Shidnale for a period of 25 years by taking a registered rent note from Shake 1848 to 1872 on condition that the plaintiff and his brother were to pay Rs 50/- as cash rent per year to the said Sattu as land lord during the said period of 25 years and to deliver back the possession on the close of the 25th year in Shake 1873 Chaitra ( The rent note was registered and executed on 31st August 1926 and all the conditions are mentioned in the said rent note and accordingly the plaintiff and his brother have been in possession as tenant of the said lands as per the said rent note.

(b) The said Sattu died without any issues on 29-3-1935 leaving behind as his heir his only widow Krishnabai wife of Sattu Koli of Kothali. The plaintiff and his brother paid the rent as per the said rent note every year to Sattu ; widow Krishnabai who as heir consented accepted the said rent note in favour of the deceased husband. This widow Krishnabai wife of Sattu Koli died on 3-12-1939 without any direct heir to herself and her husband Sattu's collaterals viz., (1) Shankar Dada Koli (2) Appanna Tatya, Shivram Balu Koli, claimed to be the heirs of the deceased Sattu to the Sattu's lands These claimants applied to the Prant Officer Northern Division, Belgaum in May 1940 under the Watan Act for restoration of the suit lands alleging that plaintiff's lease is an alienation and is therefore null and void. The Prant Officer directed the restoration of the suit lands to the applicant under the Watan Act holding that the alienation is null and void. The plaintiff being aggrieved by this decision preferred an appeal to the Collector Belgaum and the Collector decided in appeal N.W.T.P. 2353 dated 26-4-1943.

26-4-1943 that the alienation being null and void the said lands shoul be resumed and entered as Govt.waste lands for eventual disposal. The Plff. preferred an appeal to the Bombay Revenue Tribunal in appeal No. 30 of 1944. The Bombay Revenue Tribunal dismissed the plff's appeal and confirmed the decesion of the Collector on 11-2-44. The Plff. thinks that these Revenue Courts' decisions are wrong and ultravires and that plff's lease is binding on Deft.1. The plff is therefore, compelled to this Civil Suit for the reliefs claimed in this suit.

(c). The Plff's brother Bharma Shivappa Sidnale died about 7 or 8 years ago and defts 2 to 4 are his sons who are co-tenants with plff and who have an interest in the said lease. They are therefore added in this suit as defts 2 to 4 as they are not available now to join as co-plffs.

(d). The Govt.Deft.No.1 has directed through its officers to resume possession of the suit property from the plff, the plff has been compelled to file this suit for - injunction against deft.No.1 to proceed with the taking up of possession of suit from the plff during the period of lease.

(e). The plff is a small holder. He is in continuous possession of the suit property since 1925-26. He cannot be evicted from the suit property under the Small Holder's Act and also under the Tenancy Act. Deft No.1 is bound to protect plff's possession.

(3). The cause of Action for declaration arose on the respective dates or the decisions of the Prant Officer N.D., Collector of Belgaum, and the Bombay Revenue Tribunal i.e. in 1941,26-4-43. 11-2-44 respectively and ror informatic from the demand of the possession by Deft.No.1 from the. Plff. i.e. on a day in April 1944.

4. The suit being against the Bombay Provincial Govt. Bombay Province, Bombay, The First Class Sub-Judge's Court has the special Jurisdiction to try this suit.

5. The suit being for declaration with consequential relief for injunction the Court fee is paid on the said reliefs and stamps of Rs 6½ for declaration and annas eight for injunction are paid and for jurisdiction the relief for declaration with consequential relief is Rs 5/-.

6. The parties reside within the local jurisdiction of this Court and the property in ~~xxxx~~ suit and the Revenue decisions concern the subject of the suit property situated within the Local jurisdiction of this Court. This Court has jurisdiction ~~xx~~ to try this suit.

(6A). Notice of the said is given to Deft.1 as per requirements of law.

7. The plaintiff is willing to amend the plaint and add as ~~po~~ plaintiffs if any of the defendants 2 to 4 desire to join as plaintiffs in this suit.

8. The plaintiff prays :-

(1) As the registered rent note executed by the plaintiff and his brother Bharma on 31-8-1926 in favour of the deceased Sattu Koli is not in alienation under the Watan Act and Watan Act does not apply to the said terms of the ~~xxxx~~ note and where as plaintiff is not liable to be dispossessed under Small Holders Relief Act and the Tenancy Act, it be declared that defendant No.1 is not entitled to possession of the suit property from the plaintiff during the period of the said lease.

(2) The defendant No.1 be further prohibited from taking possession of the said property during the period of lease.

(3) The plaintiff be awarded his costs from deft. No.1.

(4) The plaintiff be permitted to amend the plaint if so required during the suit.

(5) The plaintiff be given any other reliefs to whic he may be entitled to in this suit.

The suit coming on before M.S.Bagali, Esquire, Joint Civil Judge, Senior Division, Belgaum in the presence of Mr. A.A.Mangagi, pleader and B.V.Jakati for defendant 1 and defendants Nos.2 to 4 exparte, it is hereby decreed that the suit is dismissed. Plaintiff to bear his own costs of suit and pay the costs of defendant No.1. Defts 2 to 4 to bear their own costs if any.

Bill of Costs.

| | To plaintiff Rs as. ps | To defendant No.1. Rs as ps |
|---|---|---|
| Stamp for plaint | 6 - 12- 0 | ----- 0-0-0 |
| Stamp for power | 1 - 4 -0 | ------ 0-0-0 |
| Stamp for Exhs. | 3 - 2 -0 | ----- 3-2-0 |
| Pleaders fees on Rs 5/- | 15 - 0 -0 | ----- 15-0-0 |
| Process fees. | 12 - 8 -0 | ---- 0-0-0 |
| Copying fees. | 0 - 4 -6. | ---- 0-0-0 |
| | 38 - 14 -6 | 18-2-0 |
| Rejected costs. on exhs. | 1 -14 - 0 | 3-2-0 |
| | 37 - 0 - 6 | 15-0-0 |

Given under my hand and the seal of the Court this 18th day of March 1947.

Found Correct.
Sd/
Clerk

Sd/ M.S.Bagali.
Jt. Civil Judge, S.D.
18-4-1947.

Pleader for plaintiff.

Seal of the Court, Civil Judge

Pleader for defendant 1.

Senior Division, Belgaum

Sub. with ltr (S. Rel 2/45)
& This is a copy of cleared
via Belgrade tel. No. 477/14. The
result of the SMB has been
received. Please ship B.
This may be filed.

A.S. P
15/11/45

S. Bel. 2/45
15/1/48

117 43

K. 307.

| | Rs.As.Ps.Fls.3 |
|---|---|
| Copying & Comparing Charges. | 1-2-0 |
| Paper charges. | 0-0-3 |
| Total | 1-2-3 |

Typed by G.R.Desai.
6/7/50
Examined by
Read by

Rupee one annas two and pies three only.

Superintendent D.D.
-7-1950

Copy applied for on 18-4-50
Copy ready on 7-7-50
Copy delivered on 8-8-50
Sent by V. P. Post on
Assistant Superintendent
8-7

HIGH COURT APPELLATE SIDE CERTIFIED COPY BOMBAY

Appeal No. 219 of 1947 from Original Decree.

---

Satawa kom Padmanna Shidnale, heir of the deceased Padmanna Shivappa Shidnale ... ... ... ... ... Appellant.
( Heir of Original Paaintiff ).

Versus

The Province of Bombay & others ... ... Respondents.
( Original Defendants Nos. 1, 3 and 4 ).

Appeal against the decision of M.S. Bagali, Esquire, Civil Judge ( Senior Division ) at Belgaum in Special Suit No. 477 of 1944.

Mr. G.N. Vaidya for Mr. G.P. Murdeshwar, Advocate for the appellant.

The Assistant Government pleader, for the respondent No. 1.

---

Coram :- Rajadhyaksha and Chainani, JJ.

17th April 1950.

Oral Judgment ( per Chainani, J.)

A preliminary objection has been taken in this case that the appeal lies to the District Court and not to this Court. The claim in the suit was valued at Rs. 6/12/- for court fees and Rs. 5/- for jurisdiction. The suit was for a declaration that defendant - No. 1, the Province of Bombay, was not entitled to take possession of the suit lands during a particular period. It is conceded by Mr. Vaidya for the appellan that an appeal to this Court is not competent. Th

preliminary objection taken by Mr. B.G. Thakor must, therefore, be allowed.

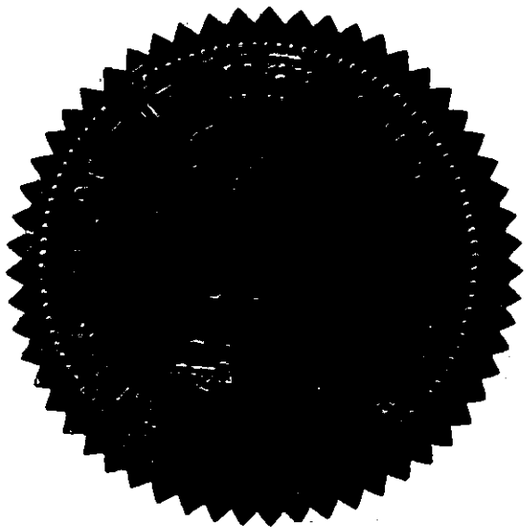
The appeal, will therefore, be returned to the Appellant for presentation to the proper Court.

Respondent No. 1 to get Rs. 45/- as costs from the appellant.

By order of the Court.

Sd. S. H. Belavadi.

Deputy Registrar.



True Copy

for Deputy Registrar.

The 7th day of July 1950

K. 307.

Typed by G.R.Desai.
6/7/50
Examined by
Read by.

Copying & Comparing Charges. Rs.As.Ps. 2-4-0
Paper charges. 0-0-6
Total 2-4-6

Rupees two, annas four and pies six only.

Superintendent D.D.
7-7-1950

Copy applied for on 18-4-50
Copy ready on 7-7-1950
Copy delivered on
sent by V. P. P. / Regd. Post on 8-8-50

Assistant Superintendent.
8-7

HIGH COURT APPELLATE SIDE CERTIFIED COPY BOMBAY

In the High Court of Judicature at Bombay.

Monday the 17th day of April 1950.

Appeal No. 219 of 1947 from Original Decree.

Satawa kom Padmanna Shidnale heir of the deceased Padmanna Shivappa Shidnale ... Appellant.
( Original Plaintiff ).
Amended vide Registrar's order dated 4-11-47 on C.A.993/1947

Versus

1. The Province of Bombay.

2. ~~Jinnappa--Bharmanna-Shidnale-~~ Name vide struck off by Court's order dated 17-4-50 on the farad.

3. Vasu Bharmanna

4. Bhima Bharmya ... ... ... ... .. Respondents.
( Original defendants ).
No. 1, 3 & 4.

Claim Rs. 5-0-0 for Court fees.

Rs. 5-0-0 for Advocate's fees.

The plaintiff sued for a declaration that the defendant No. 1, the Province of Bombay, was not entitled to the possession of the lands during the period of lease and for an injunction restraining defendant No. 1 from taking possession of the said lands and to recover costs of the suit.

The Original Suit No. 477 of 1944 was decided by the Joint Civil Judge, ( Senior Division ) of Belgaum who dismissed it with costs in favour of defendant No. 1.

An appeal has been admitted in the High Court from the decision of the lower court. Notice was ordered to issue

by the Honourable Mr. Justice Bavdekar on the 5th day of September 1947.

The grounds of objection to the decision appealed against are :-

1. As the Shet Sanadi had been discharged from his service and full assessment was levied on the Shet Sanadi land, it shoul have been held that it ceased to be Watan land to which the Bombay Hereditary Offices Act applied.

2. It was wrong not to hold that the Collector's action in dispossessing plaintiff and defendants Nos. 2 to 4 was ultra vires of him.

3. It was an error to hold that the suit was barred under the Bombay Revenue Jurisdiction Act.

4. It was wrong to hold that the suit was barred by limitation.

5. The lower court should have held that the lease of 25 years in favour of plaintiff and his brother was valid, even after the lifetime of Sattu.

6. It should have been held that the plaintiff was entitled to protection under the Bombay Small Holders' Protection Act.

7. The order as to costs is wrong.

Coram :- Rajadhyaksha and Chainani, JJ.

For the reasons stated in the accompanying judgment, the Court directs that the appeal should be returned to the appellant for presentation to the proper court.

Respondent No. 1 to get Rs. 45/- as costs from the appellant.

17th April 1950 Sd. S.H. Belavadi.

Deputy Registrar.

Bill of Costs in the High Court.

| By the appellant. | Rs.As.Ps. |
|---|---|
| Stamps for Memorandum of appeal. | 6-12-0 |
| Stamps for copies of decrees and judgments | 1-14-0 |
| Stamps for Vakalatnama. | 5-0-0 |
| Stamps for applications to enter the names of the heirs of the deceased appellant. | 5-0-0 |
| Bhatta for process | 2-0-0 |
| Sectioner's fee. | 13-10-0 |
| Advocate's fee. | 45-0-0 |
| Printing charges. | 11-0-0 |
| Stamp for affidavit. | 0-5-0 |
| Total | 90-9-0 |

By the respondent. Rs.As.Ps.

| | |
|---|---|
| Stamps for Vakalatnama ( G.P.appears ) | 0-0-0 |
| Advocate's fee. | 45-0-0 |
| Copying fee under Rule 111 of the High Court, Appellate Side Rules, 1936. | 6-0-0 |
| Total | 51-0-0 |

( Seal ) Sd. S.H. Belavadi.

Deputy Registrar.

The 17th day of April 1950.

True Copy

for Deputy Registrar.

The 6th day of July 1950

HIGH COURT APPELLATE SIDE CERTIFIED COPY BOMBAY

49

Suit at Belgaum

For a declaration that Government is not entitled to recover possession of the suit land from the Plaintiff for the duration of the lease executed by him and his brother in favour of the deceased Sattu Narsinga

GOVERNMENT OF BOMBAY.
Legal Department
Resolution No 12099
Bombay Castle, 24th August 1950

Read Government Resolution, Legal Department, No. 1845, dated the 23rd February 1948.

Letter from the Government Pleader, High Court, Bombay,

| | |
|---|---|
| In the Court of the First Class Subordinate Judge, Belgaum.<br><br>Civil Suit No. 477 of 1945.<br><br>Padmannappa Shivappa Shidnale....Plaintiff.<br>vs.<br>1. The Provincial Government of Bombay; )Defen-<br>2. Jinnappa Bharmanna Shidnale; )dants<br>3. Vasu Bharmanna;<br>4. Bhima Bharma Kothale<br><br>Claim (i) Rs.6-12-0 for Court fee<br>(ii) Rs.5- 0-0 for jurisdiction. | No. 3460, dated the 21st June 1950, stating that the First Appeal No. 219 of 1947 filed by the plaintiff in the suit noted in the margin was decided by the High Court, Bombay on 17th April 1950, when |

the following order was passed:-

"The Court directs that the appeal should be returned to the appellant for presentation to the proper Court. Respondent No. I to get Rs. 45/- as costs from the Appellant."

Letter from the Government Pleader, High Court, Bombay, No. 4944, dated the 10th August 1950, forwarding certified copies of the judgment and decree.

RESOLUTION:- The result of the appeal is recorded.

By order of the Governor of Bombay,

Original R. M. Mehta

R. M. Mehta,
Assistant Secretary to Government.

Submitted for signature
22/8

To

The Revenue Department,

The Collector of Belgaum.

A-5 22/8

BM.
22.8.

Issued 24/8

S/ 125

IN THE HIGH COURT OF JUDICATURE AT BOMBAY.

C.A.No. 1544 of 1952 for stay in L.P.A.No. 19/1952.

Udapirao Venkatrao Jahagirdar of Bihapur... Petitioner (Ori. Plaintiff)

Versus

1. The Province of Bombay.
2. The Dharwar Urban Co-Operative Credit Bank Ltd., Dharwar now under liquidation by its Liquidator at Dharwar ... ... Opponents, (Ori. Defendants)

Claim Rs.5/- for jurisdiction

The humble petition of the Petitioner above named,

Respectfully Showeth :-

1. That the petitioner's suit No.166/44 filed for a declaration and a perpetual injunction against the opponents was dismissed. The petitioner, thereupon preferred Civil Appeal No.87 of 1947 to the District Court of Bijapur and the Lower Apellate Court confirmed the decree of the Court of first instance and dismissed the said appeal with costs.

II That the petitioner then preferred Second Appeal No.1258 of 1948 in this Hon'ble Court and the said Second Appeal was modified by holding that the Bank Opponent No.2 was precluded from pursuing the s-ecd remedy as laid down in Section 59(1)(b) of the Bombay Co-Operative Societies Act however dismissed the appeal with costs on 21st December 1951.

III. Being aggrieved by the said decision. the petitioner filed an application for leave to appeal under the Letters Partent and that the Court was pleased to grant a certificate that this is a fit case for L.P.A.

IV. That inspite of the observation of his Lordship the Hon'ble Mr.Justice Vyas, the Mamlatdar of Hungund Taluka under the orders of the Collector of Bijapur issued proclama-tion No.R.R.C.57 of 1952 for sale of 3 non mortgaged lands

53
427

of the petitioner under Section 155 of L.R. Code on 28.10.195

V. Under the circumstances, the petitioner humbly approaches Your Lordships with a prayer that Your Lordship be pleased to issue an injunction restraining the opponents from proceeding with the recovery proceedings now pending before the Mamalatdar of Hungund, pending the disposal of this Letters Patent Appeal on the A-ppeal on the following among other grounds :-

1. That on admission of Second Appeal No.1258 of 1948 the petitioner applied for an injunction in C.A.No.61 of 1949, interim injunction Rule on usual terms was granted by the Hon'ble Mr. Justice Bavadekar. The said Rule came up for hearing before the Hon'ble Mr. Justice Shah who made the Rule absolute on petitioner -'s furnishing security for the interest at 4@ for two years on the amount due.
2. That in view of the observation of his Lordship Mr.Justice Vyas in the judgment, the Opponent No2 is precluded from resorting to the remedy now sought.
3. That the petitioner will be put to irreparable loss if an injunction as prayed for is not granted.

And for this act of kindness, he petitioner shall as in duty bound ever pray.

Bombay.
5-9-1952.

Sd/- T.S.Jahagirdar
Advocate for Petitioner

Coram: Bavdekar, J.
Rule & Interim injunction.
19-9-

C.A.No. 1544 of 1952 in L.P.A.19/52.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY.

Appellant (orig.Plff) Udiprao Venkatrao Hahagirdar of Bihapur.

Versus

Respondents (Orig.Defts) 1. The State of Bombay.

2. The Dharwad Urban Co-Op.Bank, Ltd. Dharwar now in liquidation by its Special Liquidator..

Herein the affidavit of the Sepcial Liquidator respondent No.2 is as under :-

I, M.B.Adrashannavar, age 35, Lingayat Government Service of Dharwar, take oath and state as under :-

The deft. in question is long outstanding, the plaintiff appellant having contracted it in 1923. Uptil now a paltry sum of Rs.450/- only has been recovered by sale of a site belonging to the plaintiff. The attempts of the Bank to recover the balance are being set at naught by the plaintiff. His three attempts have failed. And it is very likely that his present L.P.Appeal may come to nothing. More than Rs.8000/- including interest are due from him now. The respondent Bank is in its closing stages of liquidation. And the Government who is bearing the expenses of liquidation has been pressing the bank to close the proceedings early. Neither equity nor justice, nor law are in plaintiff's favour. To grant a stay in this sga stage of thisngs to the plaintiff who is a reclacitrant defaulter will be xxi aiding the protraction of liquidation proceedings.

In this circumstances, the Special Liquidator respectfully prays that the stay should not be confirmed.

Dharwar.

11th Novr. 1952

Sd. M.B.Adrashannavar
Spl Liquidator
Dharwar Urban Co-Op. Bank Ltd.
in Liquidation.

( Usual verification clause)

57 4

K.11. ls.As.Ps.(Fs.3) Typed by Mr.P.J.Vyas.

Copying and comparing charges. 1 -2 -0 Examined by Mr. S.D.Pawar
Paper charges. 0 -0 -3
Total Rs. 1 -2 -3 Read by Mr. D.T.Patwardhan

Rupee one, annas two and pies three only.

S.Mulherkar
Superintendent,D.D.,
207-1955.

Copy applied for on 6/1/53
Copy ready on 21.1.53
Copy delivered on 30-8-53
Sent by V.P.P. on No. Date
T. Dalal 30/8
Assistant Superintendent.

In the High Court of Judicature at Bombay.

Order passed by the High Court in the case of:-

Udapirao Venkatrao Jahagirdar.
(Original Plaintiff) .... Petitioner

Versus.

1. The Province of Bombay.
2. The Dharwar Urban Co-operative Credit Bank Ltd. -- Dharwar now under Liquidation by its Liquidator at Dharwar.

(Original Defendants) ... Opponents.

HIGH COURT APPELLATE SIDE BOMBAY Copy Typed Copy Checked

Being Civil application No.1544 of 1952 in Letters Patent appeal No.19 of 1952, praying for an injunction.

Mr. T.S.Jahagirdar, Advocate for the Petitioner.

Mr. N.M.Hungund, Advocate for Opponent No.2.

The Government Pleader for Opponent No.1.

Coram:- Bavdekar and Chainani,JJ.

Rule will be absolute on condition that the applicant gives security for interest at 4% from 31-8-1949 to 30th August 1953.

Three weeks from thedate of the receipt of papers in lower court, to furnish security.

Costs costs in appeal.

5-1-1953. Sd/. S.H.Belavadi.
Deputy Registrar.

58

Bill of costs in the High Court.

| By the applicant. | Rs.As.Ps. |
|---|---|
| Stamps for Memorandum of application. | 5 -0 -0 |
| Stamps for vakalatnama(In appeal) | 0 -0 -0 |
| Bhatta for process. | 2 -8 -0 |
| Advocate's fee | 45 -0 -0 |
| Stamp for affidavit. | 1 -4 -0 |
| Total Rs. | 53-12- 0 |

By ~~khmx~~ Opponent No.1.

| | |
|---|---|
| Stamps for vakalatnama(In appeal) | 0 -0 -0 |
| Advocate's fee. | 45 -0 -0 |
| Total Rs. | 45 -0 -0 |

By Opponent No.2.

| | |
|---|---|
| Stamps for vakalatnama(In appeal) | 0 -0 -0 |
| Advocate's fee. | 45 -0 -0 |
| Stamp for affidavit. | 0 -5 -0 |
| Total Rs. | 45 -5 -0 |

(Seal) Sd/. V.R.Gadkari.

Deputy Registrar.

The 5th day of January 1952.

...

True Copy.

for Deputy Registrar.

The 20th day of July 1955.